

United States

13

Circuit Court of Appeals

For the Ninth Circuit.

GENERAL STEAMSHIP CORPORATION, a
Corporation,

Appellant,

vs.

ASTORIA OVERSEAS CORPORATION, a Cor-
poration, OLOF ANDERSON, O. E. AN-
DERSON, O. B. SETTERS, T. L. GAUL,
H. VANCE, LEE DRAKE, R. R. BART-
LETT, PHILENA BARTLETT, J. FRED
LARSON, and C. A. NYQUIST,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for
the District of Oregon.

FILED

AUG 14 1923

P. H. BOWEN

United States
Circuit Court of Appeals
For the Ninth Circuit.

GENERAL STEAMSHIP CORPORATION, a
Corporation,

Appellant,

vs.

ASTORIA OVERSEAS CORPORATION, a Corporation, OLOF ANDERSON, O. E. ANDERSON, O. B. SETTERS, T. L. GAUL, H. VANCE, LEE DRAKE, R. R. BARTLETT, PHILENA BARTLETT, J. FRED LARSON, and C. A. NYQUIST,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

IRA S. LILLICK, Kohl Building, San Francisco, California, and Platt & Platt, Montgomery & Fales, Platt Building, Portland, Oregon, for the Appellant.

ANDERSON & SETTERS, Astoria, Oregon, for the Appellees.

In the District Court of the United States for the District of Oregon.

No. 8626.

GENERAL STEAMSHIP CORPORATION, a Corporation,

Plaintiff,

vs.

ASTORIA OVERSEAS CORPORATION, a Corporation, OLOF ANDERSON, O. E. ANDERSON, O. B. SETTERS, T. L. GAUL, H. VANCE, LEE DRAKE, R. R. BARTLETT, PHILENA BARTLETT, J. FRED LARSON and C. A. NYQUIST,

Defendants.

Citation on Appeal.

To Astoria Overseas Corporation, a corporation, Olof Anderson, O. E. Anderson, O. B. Setters, T. L. Gaul, H. Vance, Lee Drake, R. R. Bartlett, Philena Bartlett, J. Fred Larson and C. A. Nyquist, the above named defendants, and to Anderson & Setters, their solicitors of record.

Complaint.

Comes now the plaintiff above named, and for cause of suit against the defendants above named alleges as follows:

I.

That during all the times herein mentioned, plaintiff was and still is a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of Delaware, and authorized to transact business in the State of Oregon.

II.

That during all the times herein mentioned, defendant, Astoria Overseas Corporation, was a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of Oregon, with its principal office and place of business in the City of Astoria, State of Oregon.

III.

That each of the other defendants above named are stockholders in the defendant, Astoria Overseas Corporation, and the plaintiff is informed and believes, and therefore alleges the fact to be that the number of shares held by each of said defendants, and the amount of their unpaid stock subscriptions, is as follows, to wit:

Olof Anderson	50 shares—50 per cent unpaid;
Melvin Anderson	10 shares—50 per cent unpaid;
O. B. Setters	50 shares—50 per cent unpaid;
T. G. Gaul	25 shares—50 per cent unpaid;
H. Vance	50 shares—50 per cent unpaid;
Lee D. Drake	5 shares—50 per cent unpaid;

R. R. Bartlett
or Philena

Bartlett....15 shares—10 per cent unpaid;

J. Fred Larson 150 shares—93 per cent unpaid;

C. A. Lynquist 10 shares—45 per cent unpaid;

Each share being of the par value of One Hundred Dollars (\$100.00).

IV.

That heretofore, and on the 13th day of September, 1922, a judgment was entered by the Circuit Court of the State of Oregon, for the County of Multnomah, in favor of A. M. Gillespie, Inc., a corporation, and against General Steamship Corporation, a corporation, plaintiff above named, and Astoria Overseas Corporation, a corporation, the defendant above named, in the sum of Four Thousand Ninety-three Dollars, Eighty-two Cents (\$4.093.82), and for the costs incurred in the action wherein said judgment was recovered, which said judgment so entered against the plaintiff, General Steamship Corporation, a corporation, and defendant, Astoria Overseas Corporation, a corporation, was for the recovery of the amount of a trade acceptance drawn by the plaintiff upon the defendant, Astoria Overseas Corporation, and by said defendant accepted, and after said instrument was accepted by the Astoria Overseas Corporation, the plaintiff endorsed said instrument and transferred the same, for value, to the said A. M. Gillespie, Inc., a corporation.

V.

That after the entry of said judgment, the said A. M. Gillespie, Inc., a corporation, as the owner

of said judgment, levied an execution upon the account of the plaintiff in the Bank of California at Portland, Oregon, and also levied an execution upon the properties of the Astoria Overseas Corporation, at Astoria, Oregon.

VI.

That the plaintiff herein was compelled, by virtue of the levy of execution upon its account, to tender to the Sheriff of Multnomah County, Oregon, the sum of Four Thousand, Two Hundred Six Dollars Sixty-four Cents (\$4,206.64) in order to release the levy [5] of execution upon the account of the General Steamship Corporation, a corporation, and on the 2d day of November, 1922, the plaintiff herein did pay to the Sheriff of Multnomah County, Oregon, the sum of Four Thousand, Two Hundred Six Dollars, Sixty-four Cents (\$4,206.64), which sum constituted the amount of the judgment, together with costs and interest, which had been rendered in favor of A. M. Gillespie, Inc., a corporation against General Steamship Corporation, a corporation, and Astoria Overseas Corporation, a corporation, which judgment was duly entered in the judgment records of the Circuit Court of the State of Oregon, for the County of Multnomah.

VII.

That immediately thereafter, and on the 2d day of November, 1922, the plaintiff herein filed with the Clerk of the Circuit Court of the State of Oregon, for the County of Multnomah, a notice of payment of said Four Thousand Two Hundred Six Dollars Sixty-four Cents (\$4,206.64) so paid to the

sheriff of Multnomah County, Oregon, and a claim to contribution from the defendant, Astoria Overseas Corporation, a corporation, all in accordance with Section 243, of Olson's Oregon Laws, and thereafter said notice of payment and claim to contribution was entered by the Clerk of the Circuit Court of the State of Oregon, for the County of Multnomah, in the margin of the docket where the judgment rendered in the case of A. M. Gillespie, Inc., a corporation, plaintiff, vs. General Steamship Corporation, a corporation, and Astoria Overseas Corporation, a corporation, defendants, is entered.

VIII.

That thereafter, and on the 8th day of November, 1922, the plaintiff above named filed a motion in the Circuit Court of the State of Oregon, for the County of Multnomah, for an order directing the Clerk of the Circuit Court of the State of Oregon, for the County of Multnomah, to issue a writ of execution upon the judgment so [6] rendered in favor of A. M. Gillespie, Inc., a corporation, against said General Steamship Corporation, a corporation, and Astoria Overseas Corporation, a corporation, in favor of the plaintiff above named.

IX.

That thereafter, and on the 8th day of November, 1922, the Circuit Court of the State of Oregon, for the County of Multnomah, entered an order directing the issuance of an execution in favor of the plaintiff above named and against the defendant, Astoria Overseas Corporation, a corporation, on that certain judgment rendered by the Circuit

Court of the State of Oregon, for the County of Multnomah, on the 13th day of September, 1922 in favor of A. M. Gillespie, Inc., a corporation, and against General Steamship Corporation, a corporation, and Astoria Overseas Corporation, a corporation, which order was based upon the provisions of Section 243, of Olson's Oregon Laws, and by virtue of said order and the notice of payment and claim to contribution, filed in the manner aforesaid, the plaintiff above named became entitled to enforce against the defendant, Astoria Overseas Corporation, a corporation, that certain judgment theretofore rendered in favor of A. M. Gillespie Inc., a corporation, and against General Steamship Corporation, a corporation, and Astoria Overseas Corporation, a corporation.

X.

That on the 21st day of November, 1922, the sheriff of Clatsop County, State of Oregon, made a return upon the execution issued against the defendant, Astoria Overseas Corporation, a corporation, which return showed that said sheriff was unable to find any liquid assets of the defendant Astoria Overseas Corporation, a corporation, or any assets whatsoever out of which the judgment so rendered against the plaintiff and the defendant Astoria Overseas Corporation, a corporation, could be satisfied.

XI.

That the plaintiff has made an investigation with reference [7] to the assets of the defendant, Astoria Overseas Corporation, a corporation, and such

investigation has disclosed that there are no assets of the defendant, Astoria Overseas Corporation, a corporation, out of which the said judgment against the defendant, Astoria Overseas Corporation, a corporation, can be satisfied, except the unpaid stock subscriptions of the various stockholders, defendants above named, a list of which is hereinbefore set forth in Paragraph III of this complaint.

XII.

That the plaintiff is entitled, under and by virtue of the laws of the State of Oregon, and more particularly Section 243 of Olson's Oregon Laws, to enforce contribution against the defendant, Astoria Overseas Corporation, a corporation, for the payment of the sum of Four Thousand, Two Hundred Six Dollars, Sixty-four Cents (\$4,206.64), which sum was paid by the plaintiff to the sheriff of Multnomah County, Oregon, in order to release the execution levied upon the judgment rendered in favor of A. M. Gillespie, Inc., a corporation, against General Steamship Corporation, a corporation, and Astoria Overseas Corporation, a corporation, by the Circuit Court of the State of Oregon, for the County of Multnomah, which execution was levied against the properties and accounts of the plaintiff herein.

XIII.

That plaintiff has no plain, speedy or adequate remedy at law, but only in equity.

XIV.

That this is a controversy between citizens of different States, to wit: the plaintiff is a resident and

inhabitant of the State of Delaware, and the defendants, and each of them, are residents and inhabitants of the State of Oregon, and the amount in controversy exceeds the sum of Three Thousand Dollars (\$3,000.00) exclusive of interest and costs [8]

WHEREFORE, plaintiff prays for a decree of this Court, directing the defendant stockholders, and each of them, to pay into the treasury of the defendant, Astoria Overseas Corporation, the amount of the unpaid balance upon their respective stock subscriptions, and that the respective amounts so paid upon said stock subscriptions be applied in payment of the amount which the plaintiff was compelled to pay in order to release the levy of execution upon the judgment rendered against it and the defendant, Astoria Overseas Corporation to wit, the sum of Four Thousand Two Hundred Six Dollars, Sixty-four Cents (\$4,206.64), and that an injunction be issued by this Court restraining the defendants, and each of them, from making any disposition of the respective shares of stock held by them in the defendant, Astoria Overseas Corporation, a corporation, during the pendency of this suit; and that the defendant, Astoria Overseas Corporation, a corporation, be restrained by injunction from making any disposition of any of the moneys received by it on its unpaid stock subscriptions, during the pendency of this suit, and until further order of this Court; and for an order to show cause why such injunction should not be made permanent; and for a decree against

the defendants, and each of them, in the sum of Four Thousand Two Hundred Six Dollars, Sixty-four Cents (\$4,206.64), together with interest from the 2d day of November, 1922, and for plaintiff's costs and disbursements herein, the total to be paid in proportion to the amount unpaid upon their respective stock subscriptions to the capital stock of the defendant, Astoria Overseas Corporation, a corporation; and for an order requiring the defendant, Astoria Overseas Corporation, a corporation, to produce the records of said corporation showing the full list of unpaid stock subscriptions to the capital stock of said defendant, Astoria Overseas Corporation, a corporation; and that a receiver be appointed to collect such unpaid stock subscriptions; and that a subpoena be issued out of the above-entitled Court to [9] the defendants, and each of them, requiring them to appear before this Court, on a day certain to be named, and answer the complaint herein filed; and for such other and further relief as may to the Court seem equitable and proper.

PLATT & PLATT, MONTGOMERY & FALES,
Solicitors for Plaintiff.

HUGH MONTGOMERY,
ROBERT TREAT PLATT,
Of Counsel.

United States of America,
District of Oregon,—ss.

I, J. C. Settle, being first duly sworn, depose and say that I am Resident Agent of General Steamship Corporation, a corporation, the plaintiff in the

above-entitled suit, and that I have read the foregoing complaint, and that the same is true, as I verily believe.

J. C. SETTLE.

Subscribed and sworn to before me this 1st day of December, 1922.

[Notarial Seal]

FRANK HALL REEVES,
Notary Public in and for the State of Oregon.
My Commission expires July 28, 1926.

Filed December 2, 1922. G. H. Marsh, Clerk. [10]

AND AFTERWARDS, to wit, on the 24th day of February, 1923, there was duly filed in said Court, an Amended Answer, in words and figures as follows, to wit: [11]

In the District Court of the United States for the District of Oregon.

No. E-8626.

GENERAL STEAMSHIP CORPORATION, a
Corporation,

Plaintiff,

vs.

ASTORIA OVERSEAS CORPORATION, a Corporation, OLOF ANDERSON, O. E. ANDERSON, O. B. SETTERS, T. L. GAUL, H. VANCE, LEE DRAKE, R. R. BARTLETT, PHILENA BARTLETT, J. FRED LARSON, and C. A. NYQUIST,

Defendants.

Amended Answer.

Come now the defendants above named and for answer to plaintiff's complaint admits, denies and alleges as follows:

I.

Admits that all of the defendants above named are stockholders of the "Astoria Overseas Corporation," a corporation, alleged in paragraph three (3) of plaintiff's complaint, but denies the *pro rata* unpaid of each stockholder as alleged in said paragraph three (3) and alleges the facts to be as follows, to wit:

Olof Anderson, amount unpaid	\$2242.50
O. E. Anderson, amount unpaid	700.00
Philena Bartlett, amount unpaid	375.00
Lee D. Drake, amount unpaid ...	250.00
T. L. Gaul, amount unpaid	1500.00
J. Fred Larson, amount unpaid	13500.00
C. A. Nyquist, amount unpaid	400.00
W. H. Vance, amount unpaid	4000.00
O. B. Setters, amount unpaid	1845.50

II.

Admits that on the 13th day of September, 1922, a judgment was entered by the Circuit Court of the State of Oregon for the County of Multnomah, in favor of the A. M. Gillespie Company, Inc., a corporation and against the General Steamship Corporation, a corporation, in the sum of Four Thousand Ninety-three Dollars Eighty-two Cents (\$4093.-82), and for costs incurred in the action [12] as alleged in paragraph Four (4) of plaintiff's complaint, but denies each and every allegation, matter

and thing contained in paragraph Four (4) not herein admitted.

III.

Admits paragraph Five (5) of plaintiff's complaint.

IV.

Denies paragraph Six (6) of plaintiff's complaint upon the grounds and for the reason that these answering defendants have no knowledge, information or belief that the same is true.

V.

Denies paragraph Seven (7) of plaintiff's complaint upon the grounds and for the reason that these answering defendants have no knowledge, information or belief that the same is true.

VI.

Admits paragraph Eight (8) of plaintiff's complaint.

VII.

Admits paragraph Nine (9) of plaintiff's complaint.

VIII.

Admits paragraph Ten (10) of plaintiff's complaint.

IX.

Admits paragraph Eleven (11) of plaintiff's complaint.

X.

Denies paragraph Twelve (12) of plaintiff's complaint upon the grounds and for the reason that these answering defendants have no knowledge, information or belief that the same is true.

For a Further Separate Answer and Defense Defendants Allege:

I.

That during all of the times herein mentioned, [13] plaintiff was and still is a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of Delaware, and authorized to transact business in the State of Oregon.

II.

That during all of the times herein mentioned, defendant Astoria Overseas Corporation, was a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of Oregon, with its principal office and place of business in the City of Astoria, Clatsop County, State of Oregon.

III.

That during the month of July, 1921, the defendant Astoria Overseas Corporation, became indebted to the Astoria National Bank in the sum of Five Thousand Dollars (\$5,000.00), in the way of securing a loan from said bank, and pledged to the said bank, the then unpaid subscriptions as security to the said bank for the payment of same, and the said sum of Five Thousand Dollars (\$5,000.00) has not been paid, and there is now due and owing said bank by the Astoria Overseas Corporation the full sum of Five Thousand Dollars (\$5,000.00), which said security has never been released by the said bank and is still a first lien against the subscriptions and all of them.

IV.

That the said Astoria Overseas Corporation ceased to function on the first day of June, 1922, and has not transacted any business since that time, and at the said time placed all of its affairs in the hands of O. B. Setters as trustee for the purpose of liquidating its liabilities and that the said O. B. Setters in turn placed all of the assets of the Astoria Overseas Corporation into the hands of the Astoria National Bank to be held in trust for the [14] creditors of the Astoria Overseas Corporation, and which assets of the Astoria Overseas Corporation consist as follows, to wit:

STOCKHOLDER LIABILITIES.

Olof Anderson, amount unpaid.....	\$2242.50
O. E. Anderson, amount unpaid	700.00
Philena Bartlett, amount unpaid....	375.00
Lee D. Drake, amount unpaid	250.00
T. L. Gaul, amount unpaid	1500.00
J. Fred Larson, amount unpaid	13500.00
C. A. Nyquist, amount unpaid	400.00
W. H. Vance, amount unpaid	4000.00
O. B. Setters, amount unpaid.....	1845.50
and Seventy (70) shares of stock in the Pacific Overseas Corporation.	

The liabilities of the Astoria Overseas Corporation, other than the plaintiff's claim are as follows, to wit:

Astoria National Bank	\$5000.00
Spokesman Review Company	15.00
Radio of America	210.01
Silver Falls Timber Company	1642.44

J. T. Steeb & Company	28.36
McBain & Company	316.50
G. W. Walters	15.00
Chinese American Product Company	24.00
Postal Telegraph Company	162.87
Cohn Drafts	9193.00
Egerton Burnett Company dated De- cember 20, 1922, 13.56 pounds.	_____

That the said Astoria Overseas Corporation is insolvent in that some of its stockholders are insolvent and cannot pay their subscriptions, and that said Astoria Overseas Corporation should be declared a Bankrupt by this Court and the assets of the Corporation liquidated, and each of the creditors of the said Corporation receive *pro rata* their share of the assets after payment of the Five Thousand Dollars (\$5,000.00) due the Astoria National Bank.

WHEREFORE, defendants pray that the plaintiffs take nothing herein, and that the Astoria Overseas Corporation be declared a bankrupt and a receiver appointed for the benefit of all of the [15] creditors of the Astoria Overseas Corporation, and that the claim of the General Steamship Corporation *pro rata* in the assets with the remaining creditors.

ANDERSON & SETTERS,
Attorneys for Defendants.

State of Oregon,
County of Clatsop,—ss.

I, O. B. Setters, being first duly sworn, depose and say that I am one of the defendants in the

above-entitled suit, and that the foregoing amended complaint is true as I verily believe.

O. B. SETTERS.

Subscribed and sworn to before me this 21st day of February, 1923.

OLOF ANDERSON,

The words

Notary Public for Oregon.

[Notarial Seal]

written in.

My commission expires January 10, 1925.

State of Oregon,

County of Clatsop,—ss.

I, O. B. Setters, one of defendants' Attorneys, do hereby certify that I have prepared the foregoing copy of Amended Answer, and have carefully compared the same with the original thereof, and that it is a correct transcript therefrom and of the whole thereof.

That the said — in my opinion is well founded in law.

— Oregon, dated the 21st day of February, 1923.

O. B. SETTERS.

Filed February 24, 1923. G. H. Marsh, Clerk.

[16]

AND AFTERWARDS, to wit, on the 22d day of March, 1923, there was duly filed in said Court, a Second Amended Answer, in words and figures as follows, to wit: [17]

In the District Court of the United States for the District of Oregon.

No. E-8626.

GENERAL STEAMSHIP CORPORATION, a Corporation,

Plaintiff,

vs.

ASTORIA OVERSEAS CORPORATION, a Corporation, OLOF ANDERSON, O. E. ANDERSON, O. B. SETTERS, T. L. GAUL, H. VANCE, LEE D. DRAKE, R. R. BARTLETT, PHILENA BARTLETT, J. FRED LARSON and C. A. NYQUIST,

Defendants.

Second Amended Answer.

Come now the defendants above named and for answer to plaintiff's complaint admits, denies and alleges as follows:

I.

Admits that all of the defendants above named are stockholders of the "Astoria Overseas Corporation," a corporation, alleged in paragraph three (3) of plaintiff's complaint, but denies the *pro rata* unpaid of each stockholder as alleged in said paragraph

three (3), and alleges the facts to be as follows, to wit:

Olof Anderson amount unpaid.....	\$2242.50
O. E. Anderson amount unpaid	700.00
Philena Bartlett amount unpaid	375.00
Lee D. Drake amount unpaid	250.00
T. L. Gaul amount unpaid	1500.00
J. Fred Larson amount unpaid	13500.00
C. A. Nyquist amount unpaid	400.00
W. H. Vance amount unpaid	4000.00
O. B. Setters amount unpaid	1725.50

II.

Admits that on the 13th day of September, 1922, a judgment was entered by the Circuit Court of the State of Oregon for the County of Multnomah in favor of the A. M. Gillespie Company, Inc., a corporation and against the General Steamship Corporation, a corporation, in the sum of Four Thousand Ninety-three dollars eighty-two Cents (\$4,093.-82), and for costs incurred in the action as alleged in paragraph four (4) of plaintiff's complaint, but denies each and every allegation, matter and thing contained in paragraph Four (4) not herein admitted. [18]

III.

Admits paragraph Five (5) of plaintiff's complaint.

IV.

Denies paragraph Six (6) of plaintiff's complaint upon the grounds and for the reason that these answering defendants have no knowledge, information or belief that the same is true.

V.

Denies paragraph Seven (7) of the plaintiff's complaint upon the grounds and for the reason that these answering defendants have no knowledge, information or belief that the same is true.

VI.

Admits paragraph Eight (8) of plaintiff's complaint.

VII.

Admits paragraph Nine (9) of plaintiff's complaint.

VIII.

Admits paragraph Ten (10) of plaintiff's complaint.

IX.

Admits paragraph Eleven (11) of plaintiff's complaint.

X.

Denies paragraph Twelve (12) of plaintiff's complaint upon the grounds and for the reason that these answering defendants have no knowledge, information or belief that the same is true.

For a further separate answer and defense defendants allege:

I.

That during all of the times herein mentioned plaintiff was and still is a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of Delaware, and authorized to transact business in the State of Oregon.

II.

That during all of the times herein mentioned de-

fendant, [19] "Astoria Overseas Corporation," was a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of Oregon, with its principal office and place of business in the City of Astoria, Clatsop County, State of Oregon.

III.

That during the month of July, 1921, the defendant "Astoria Overseas Corporation," became indebted to the "Astoria National Bank" in the sum of Five Thousand Dollars (\$5,000.00), in the way of securing a loan from said bank, and pledged to the said bank the then unpaid subscriptions as security to said bank for the payment of same, and the said sum of Five Thousand Dollars (\$5,000.00) has not been paid, and there is now due and owing said bank from the "Astoria Overseas Corporation" the full sum of Five Thousand Dollars (\$5,000.00), which said security has never been released by the said bank and is still a first lien against the subscriptions and all of them.

IV.

That the said "Astoria Overseas Corporation" ceased to function on the first day of June, 1922, and has not transacted any business since that time, and at the said time placed all of its affairs in the hands of O. B. Setters as trustee, for the purpose of liquidating its liabilities and that the said O. B. Setters in turn placed all of the assets of the "Astoria Overseas Corporation" into the hands of the "Astoria National Bank" to be held in trust for the creditors of the "Astoria Overseas Corporation,"

and which assets of the “Astoria Overseas Corporation” consist as follows, to wit:

STOCKHOLDERS’ LIABILITIES.

Olof Anderson amount unpaid	\$2242.50
O. E. Anderson amount unpaid	700.00
Philena Bartlett amount unpaid	375.00
Lee D. Drake amount unpaid	250.00
T. L. Gaul amount unpaid	1500.00
J. Fred Larson amount unpaid	13500.00
C. A. Nyquist amount unpaid	400.00
W. H. Vance amount unpaid	4000.00
O. B. Setters amount unpaid	1725.50
and Seventy (70) shares of stock in	

the “Pacific Overseas Corporation.” [20]

The liabilities of the “Astoria Overseas Corporation” other than the plaintiff’s claim are as follows, to wit:

Astoria National Bank	\$5000.00
Spokesman Review Company	15.00
Radio of America	210.01
Silver Falls Timber Co.	1642.44
J. T. Steeb & Co.	28.36
McBain & Co.	316.50
G. W. Walters	15.00
Chinese American Products Co.	24.00
Cohn Drafts	162.87
Edgerton Burnett Co. dated December	

20th, 1922—13.56 lbs.

That the said “Astoria Overseas Company” is insolvent in that some of its stockholders are insolvent and cannot pay their subscriptions, and that the assets of the Corporation should be liquidated, and

each of the creditors of the said corporation receive *pro rata* their share of the assets after the payment of the Five Thousand Dollars (\$5,000.00) due the Astoria National Bank.

WHEREFORE, defendants pray that the plaintiff take nothing herein and that a Receiver be appointed for the benefit of all of the creditors of the "Astoria Overseas Corporation," and that the claim of the General Steamship Corporation *pro rata* in the assets with the remaining creditors herein set forth after the payment of the Five Thousand Dollars (\$5,000.00) to the Astoria National Bank.

ANDERSON & SETTERS,
Attorneys for Defendants.

State of Oregon,
County of Clatsop,—ss.

I, O. B. Setters, being first duly sworn, depose and say that I am one of the defendants in the above-entitled suit, and that the foregoing 2d amended answer is true as I verily believe.

O. B. SETTERS.

Subscribed and sworn to before me this 20th day of March, 1923.

[Notarial Seal]

OLOF ANDERSON,

Notary Public for Oregon.

My commission expires Jan. 10, 1925.

Filed March 22, 1923. G. H. Marsh, Clerk. [21]

AND AFTERWARDS, to wit on Monday, the 21st day of May, 1923, the same being the 64th judicial day of the regular March term of said Court, Present the Honorable ROBERT S. BEAN, United States District Judge, presiding,—the following proceedings were had in said cause, to wit: [22]

In the District Court of the United States for the District of Oregon.

May 21, 1923.

No. E-8626.

GENERAL STEAMSHIP COMPANY,

vs.

ASTORIA OVERSEAS CORPORATION, a Corporation, OLOF ANDERSON, O. E. ANDERSON, O. B. SETTERS, T. L. GAUL, H. VANCE, LEE D. DRAKE, R. R. BARTLETT, PHILENA BARTLETT, J. FRED LARSON and C. A. NYQUIST.

Minutes of Court—May 21, 1923—Trial Decree.

This cause was heard by the Court upon the pleadings and the proofs, plaintiff appearing by Mr. Hugh Montgomery and Mr. Arthur Platt, of counsel, and defendants by Mr. O. B. Setters, of counsel, and the Court, having heard the evidence adduced and the arguments of counsel, upon consideration thereof,

IT IS ORDERED, ADJUDGED and DECREED that the complaint herein be and the same is hereby

dismissed, that plaintiff take nothing by this action, and that defendants do have and recover of and from said defendants their costs and disbursements herein taxed in the sum of \$——, and that defendants have execution therefor.

R. S. BEAN,

Judge. [23]

AND AFTERWARDS, to wit, on the 21st day of May, 1923, there was duly filed in said Court, an opinion in words and figures as follows, to wit: [24]

In the District Court of the United States for the District of Oregon.

March 21, 1923.

GENERAL STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

ASTORIA OVERSEAS CORPORATION, a Corporation, et al.,

Defendants.

Opinion.

R. S. BEAN, District Judge (Oral).—The suit of the General Steamship Corporation against the Overseas Corporation is a suit brought by a judgment creditor against the stockholders of the defendant corporation to require them to account to the plaintiff for the unpaid subscriptions to its stock. The facts are, and there is no controversy

about them, that the Overseas Corporation was organized sometime in 1920 and ceased to function in June, 1922. On July 1, 1921, it borrowed \$5000 from the bank in Astoria, and by resolution of the directors the unpaid subscriptions to the capital stock were pledged to the bank as security for this note. At that time the company was not indebted in any sum other than this \$5000. In June of 1922, the corporation ceased to function and made an assignment and transfer of its assets to Mr. Setter for the benefit of the creditors. Thereafter in September, 1922, the plaintiff recovered this judgment.

The plaintiff argues, first, that the attempted assignment or transfer by the directors of the corporation to the Astoria Bank of the unpaid and uncalled for stock subscriptions was void for want of authority in the Board of Directors to make such transfer, and the general rule seems to be that the unpaid and uncalled for subscriptions to the capital stock of a company cannot be sold or pledged by the corporation, but it is equally as well settled, as I take it, that that may be done by consent of the stockholders, [25] and in this case the stockholders are consenting. They have appeared in court here and insisted upon the validity of that transfer and are making that defense to this action, and they must have consented to the transfer, and in my judgment it is valid under the circumstances. So likewise with the transfer of the assets of the corporation to Mr. Setter as trustee for the benefit of the creditors; that is also ratified and approved

by the parties to this suit and I can conceive of no valid objection to it.

So I take it that under the record in this case and under the undisputed facts, the bill should be dismissed.

Filed, May 21, 1923. G. H. Marsh, Clerk. [26]

AND AFTERWARDS, to wit, on the 23d day of July, 1923, there was duly filed in said Court, a statement of the evidence, in words and figures as follows, to wit: [27]

In the District Court of the United States for the District of Oregon.

GENERAL STEAMSHIP CORPORATION, a corporation,

Plaintiff,

vs.

ASTORIA OVERSEAS CORPORATION, a corporation, OLOF ANDERSON, O. E. ANDERSON, O. B. SETTERS, T. L. GAUL, H. VANCE, LEE DRAKE, R. R. BARTLETT, PHILENA BARTLETT, J. FRED LARSON and C. A. NYQUIST,

Defendants.

Stipulation Re Evidence.

It is hereby stipulated by and between the parties herein through their respective attorneys of record. Platt & Platt, Montgomery and Fales for the plain-

tiff and O. B. Setters for the defendants that the within is a correct transcript of evidence and may constitute the record on appeal.

PLATT & PLATT, MONTGOMEY & FALES,
Solicitors for the Appellants.

O. B. SETTERS,
Solicitor for the Respondents.

Filed July 23, 1923. G. H. Marsh, Clerk. [28]

In the District Court of the United States for the
District of Oregon.

No. 8626.

GENERAL STEAMSHIP CORPORATION, a corporation,

Plaintiff,

vs.

ASTORIA OVERSEAS CORPORATION, a corporation, OLOF ANDERSON, O. E. ANDERSON, O. B. SETTERS, T. L. GAUL, H. VANCE, LEE DRAKE, R. R. BARTLETT, PHILENA BARTLETT, J. FRED LARSON and C. A. NYQUIST,

Defendants.

Transcript of Evidence.

This cause came on to be heard on Friday, the 27th day of April, 1923, at the hour of ten o'clock A. M. before the Honorable Robert S. Bean, Judge of the above-entitled Court, plaintiff appearing by Hugh Montgomery of Platt & Platt, Montgomery

& Fales, its attorneys, and the defendants appearing by Anderson & Setters, their attorneys, and the following proceedings were had:

At the beginning of the trial, counsel for the defendants admitted in open court the existence of the judgment which the plaintiff sought to enforce against the defendants, and also admitted the levy of execution thereon, and admitted that a claim for contribution from the defendants had been filed by the plaintiff under and in accordance with Section 243 of the Oregon Code, which claim was for the amount of the judgment.

Counsel for the defendants also admitted in open court, paragraph XII of the complaint filed by the plaintiff.

Counsel for the defendants also admitted in open court, paragraph VI of the complaint.

Counsel for the defendants also admitted in open court that the original judgment entered against the defendant, Astoria Overseas Corporation, and in favor of the plaintiff, had never been appealed from by either party.

Counsel for the defendants also stated in open court that the only issue involved in the trial was the disposition [29] of the assets of the Astoria Overseas Corporation, or, in other words, the liquidating of the liabilities of the corporation, and further stated that during the life of the corporation he, Mr. O. B. Setters, one of the counsel for the defendants, had been the Secretary of the corporation.

All of the material allegations of the complaint filed by the plaintiff were admitted by the judicial

admissions of counsel for the defendants, made in open court, and thereupon Mr. O. B. Setters, as the principal witness, testified as follows:

That the defendant corporation was organized in the fall of 1920 and functioned until June 1st, 1922. That the stockholders of the corporation subscribed for the bigger portion of the stock, and paid a portion of the subscription at the time. That in July, 1921, it became necessary for the company to borrow \$5,000. That the company at that time had no other liabilities, and its assets were the unpaid subscriptions of the stockholders of the corporation. That arrangements were made with the Astoria National Bank to borrow the \$5,000 on condition that the Board of Directors endorsed the note for \$5,000 which they did, and on the further condition that the unpaid stock subscriptions of the stockholders be assigned to the Astoria National Bank for the purpose of additional security, and by resolution of the corporation made by the Board of Directors at the time this loan was made, the unpaid stock subscriptions of the corporation were assigned to the Astoria National Bank. That on December 8th, 1922, the Astoria fire destroyed the records of the corporation, which were in Mr. Setters' office, and that he saved nothing, and was testifying from memory and from the records at the bank after the fire, in connection with this transaction. That the stock was not issued because it was not paid for, and the company only issued stock to the amount that was paid by the stockholders at the time of the incorporation, and the subscriptions

remained intact subject [30] to the call of the Board of Directors. That part of the records in the bank were also in the fire, but the note of the corporation of \$5,000 together with a list of stockholders or unpaid stock subscriptions which were attached to the note were secured from the bank showing the amount unpaid and the unpaid stock subscriptions outstanding at the time of the trial of this case.

Olof Anderson	\$2242.00
O. E. Anderson	700.00
Philena Bartlett	375.00
L. D. Drake	250.00
T. L. Gaul	1500.00
J. Fred Larsen	13500.00
C. A. Nyquist	400.00
W. H. Vance	4000.00
O. B. Setters	1725.50

That the defendant corporation became very heavily involved, and by June 1st or the latter part of May, 1922, the Board of Directors closed or stopped the functioning of the corporation, and the assets of the corporation were, by resolution of the Board of Directors, assigned to O. B. Setters as Trustee, and these assets, being in the hands of the Astoria National Bank and the only assets of the defendant corporation, were the unpaid stock subscriptions. That this litigation and other litigations came up, and no effort has been made to make any collections on the stock subscriptions until the final result of the present suit. That at the commencement of this suit, the complaint asked for a

restraining order preventing further collections on the stock subscriptions, and no action was taken. That the claim of the Astoria National Bank and the \$5,000 note against the Astoria Overseas Corporation has never been satisfied, and there is considerable interest due that has not been paid, running the claim up to possibly \$5,300, which the Astoria National Bank holds the subscriptions as security for the payment of this note of \$5,000. That there are, in addition to the claim of the plaintiff in this case, liabilities of the [31] corporation as follows:

At this juncture, and objection was interposed to the evidence of other liabilities upon the ground that the creditors are not parties to the present controversy, and that it is no defense to a suit of the kind involved in the case at bar for the defendant, Astoria Overseas Corporation or its stockholders in a suit seeking to have the amount of their unpaid stock subscriptions applied to the satisfaction of this judgment, to set forth the claims of other creditors not parties to this suit.

Over said objection, the following items were interposed:

Astoria National Bank	\$5,000.00
Spokesman Review	15.00
Radio of America	210.01
Silver Falls Timber Company ..	1,643.44
Without accrued interest	
J. T. Steeb & Company	28.36
McBain & Company	316.50

G. W. Walters	15.00
Chinese-American Product Co...	24.00
Cohn Drafts—	

That the total disbursements should be nine thousand and some odd dollars. That Egerton Burnett Company 13.56# (that is English money). That there is a claim of upwards of nine hundred dollars which the Astoria Flour Mills has against the company, which is in question. That there is the total of the liabilities of the corporation. That the present stockholders are practically all insolvent, and the creditors would realize very little at the outside if the total amount received was prorated among all the creditors. That the assignment of the corporation, which was made at a time there were no liabilities save and except this \$5,000 of the bank, was made in good faith by the Board of Directors to the Astoria National Bank for the purpose of securing said liability, and the liabilities which are enumerated in the defendants' answer as listed by O. B. Setters were all contracted months after this assignment was made to the bank, and became a liability against the company [32] the latter part of the year 1921 and up to the 1st of June, 1922. That the sum of \$4,206.64 with costs, being the amount of the judgment sued on in this case, has never been paid by the Astoria Overseas Corporation to the General Steamship Corporation. That the assignment to the bank was prior to all the other items of indebtedness to which the witness testified. That the witness was secretary and treasurer of the Astoria Overseas Corporation from

its inception to the 1st of June, 1922, and that the statements of the witness are based upon facts obtained during the time that he was officer of the corporation, and that the records of the Astoria Overseas Corporation were all destroyed including the stock certificate book, the journals, ledgers and all other documents which were kept during the time of the operation of the defendant corporation. That the assignment to the Astoria National Bank was the assignment of the stock subscription list, of each individual stockholder of the Astoria Overseas Corporation.

Testimony of B. F. Stone, for Defendants.

B. F. STONE was called as a witness on behalf of defendants, and testified that he was President and Director of the Astoria Overseas Corporation from its inception until the 1st of June, 1922. That he had heard the testimony of Mr. O. B. Setters and that the same was a correct statement. That he was present at a meeting of the Board of Directors of the defendant corporation about July 1st, 1921, when the corporation, through its Board of Directors, borrowed \$5,000 from the Astoria National Bank, and assigned to the Astoria National Bank the unpaid stock subscriptions as a matter of security for the payment of the \$5,000 note, and was present when the Board of Directors adopted a resolution making such assignment. That such was a true statement of the making of the assignment, and the endorsement of the note, and that the witness was one of the endorsers of the note. That

(Testimony of B. F. Stone.)

to the knowledge of the witness there were no outstanding liabilities of the defendant corporation at the time of the said assignment to the Astoria National [33] Bank. That the witness is a Director of the Astoria National Bank, and that the said \$5,000 note was not paid up until the day before the trial of this case. That there is still a liability of \$5,000 in favor of the Astoria National Bank. That the note is still in the hands of the bank. That there were five endorsers on the note. That these endorsements were all an individual liability, and not as officers of the Astoria Overseas Corporation. That there had been a loss of quite a material amount on a shipment of lumber to Honolulu, and the party to whom the draft was drawn had received the lumber, and didn't pay the draft which resulted in a material loss, necessitating the loan of said \$5,000.

Testimony of R. R. Bartlett, for Defendants.

Thereupon, R. R. BARTLETT was called as a witness on behalf of the defendants, who testified as follows:

It was stipulated between counsel for the plaintiff and defendants that the testimony of the witness would be corroborative of the testimony of O. B. Setters.

It was stipulated between counsel for the respective parties that if the bookkeeper for the Astoria Overseas Corporation was called to the stand that she would testify that the list of creditors shown

(Testimony of R. R. Bartlett.)

in the answer of the defendants and on the list used by Mr. Setters in his testimony, constituted a correct list of the creditors of the Astoria Overseas Corporation on the 1st day of June, 1922, and that the said bookkeeper if called to the stand would testify as to the amount of the unpaid stock subscriptions of the Astoria Overseas Corporation as being the amount set forth in the answer of the defendants.

Thereupon the defendants rested. [34]

Certificate of Judge.

I. Robert S. Bean, Judge of the United States District Court for the District of Oregon, and the Judge who tried the within-entitled cause, do hereby certify that the above and foregoing statement contains all the evidence introduced upon the trial of said cause, and all of the exhibits introduced upon the trial of said cause, and that said statement is hereby settled and allowed as the statement on appeal in the above-entitled suit.

July 23, 1923.

R. S. BEAN,
Judge.

Filed July 23, 1923. G. H. Marsh, Clerk. [35]

AND AFTERWARDS, to wit, on the 23d day of July, 1923, there was duly filed in said court, a petition for appeal, in words and figures as follows, to wit: [36]

In the District Court of the United States for the
District of Oregon.

No. 8626.

GENERAL STEAMSHIP CORPORATION, a
Corporation,

Plaintiff,

vs.

ASTORIA OVERSEAS CORPORATION, a Corporation, OLOF ANDERSON, O. E. ANDERSON, O. B. SETTERS, T. L. GAUL, H. VANCE, LEE DRAKE, R. R. BARTLETT, PHILENA BARTLETT, J. FRED LARSON and C. A. NYQUIST,

Defendants.

Petition for Appeal.

To the Honorable Judges of the Circuit Court of Appeals for the Ninth Circuit.

Comes now the plaintiff above named by his solicitors, and complains that in the record and proceedings, as also in the rendition of the decree of the United States District Court for the District of Oregon in the above-entitled cause on the 21st day of May, 1923, manifest error has intervened to the great damage of the petitioner;

The above plaintiff conceiving itself aggrieved by the decree made and entered in the above-entitled court and cause on the 21st day of May, 1923, it has hereby appealed from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith.

WHEREFORE, the plaintiff prays that an appeal be allowed it in the above-entitled cause, directing the Clerk of the District Court of the United States for the District of Oregon to send the record and proceedings in said cause, with all things concerning the same, to the Circuit Court of Appeals for the Ninth Circuit, in order that the error complained of in the assignment of errors filed herewith by the plaintiff may be *renewed*, and if error be found, corrected.

IRA S. LILLICK,
PLATT & PLATT,
MONTGOMERY & FALES,
Solicitors for Plaintiff.

Filed July 23, 1923. G. H. Marsh, Clerk. [37]

AND AFTERWARDS, to wit, on the 23d day of July, 1923, there was duly filed in said court, an assignment of errors, in words and figures as follows, to wit: [37a]

In the District Court of the United States for the
District of Oregon.

No. 8626.

GENERAL STEAMSHIP CORPORATION, a
Corporation,

Plaintiff,

vs.

ASTORIA OVERSEAS CORPORATION, a Cor-
poration, OLOF ANDERSON, O. E. AN-
DERSON, O. B. SETTERS, T. L. GAUL,
H. VANCE, LEE DRAKE, R. R. BART-
LETT, PHILENA BARTLETT, J. FRED
LARSON and C. A. NYQUIST,

Defendants.

Assignment of Errors.

Comes now the plaintiff, appearing by Ira S. Lillick and by Messrs. Platt & Platt, Montgomery & Fales, its attorneys of record, and says in the record and proceedings herein there is manifest error and assigns error as follows:

I.

The Trial Court erred in holding that the assignment of the stock subscription list of the Astoria Overseas Corporation to the Astoria National Bank was a valid assignment, and took precedence over the judgment held by the plaintiff.

II.

The Court erred in refusing to hold that the unpaid and uncalled stock subscriptions to the Asto-

ria Overseas Corporation could not be sold and assigned or mortgaged by the corporation.

III.

The Court erred in holding that the assignment of all the assets of the Astoria Overseas Corporation to O. B. Setters as Trustee was a valid assignment.

IV.

The Court erred in refusing to hold that the Board of Directors of the Astoria Overseas Corporation could not legally assign all of its assets to O. B. Setters as Trustee.

V.

The Court erred in refusing to hold that the plaintiff, as a judgment creditor of the Astoria Overseas Corporation, had a [38] right to bring the present action without joining the other creditors.

VI.

The Court erred in refusing to hold that a receiver could not be appointed as prayed for by the prayer of the answer filed on behalf of the defendants.

VII.

The Court erred in refusing to hold that the plaintiff was entitled to a decree requiring the stockholders of the defendant, Astoria Overseas Corporation, to pay into court the amount of their unpaid stock subscriptions, and further erred in refusing to hold that the plaintiff was entitled to a decree applying the amount of said unpaid sub-

scriptions in satisfaction of the judgment held by the plaintiff.

IRA S. LILLICK,
PLATT & PLATT,
MONTGOMERY & FALES,
Solicitors for Plaintiff.

Filed July 23, 1923. G. H. Marsh, Clerk. [39]

AND AFTERWARDS, to wit, on Monday, the 23d day of July, 1923, the same being the 19th judicial day of the regular July term of said court, present the Honorable ROBERT S. BEAN, United States District Judge, presiding,—the following proceedings were had in said cause, to wit: [40]

In the District Court of the United States for the District of Oregon.

No. 8626.

GENERAL STEAMSHIP CORPORATION, a
Corporation,

Plaintiff,

vs.

ASTORIA OVERSEAS CORPORATION, a Corporation, OLOF ANDERSON, O. E. ANDERSON, O. B. SETTERS, T. L. GAUL, H. VANCE, LEE DRAKE, R. R. BARTLETT, PHILENA BARTLETT, J. FRED LARSON and C. A. NYQUIST,

Defendants.

Order Allowing Appeal.

IT IS HEREBY ORDERED that the appeal in the above-entitled cause to the Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby allowed as prayed, and

IT IS FURTHER ORDERED, that the plaintiff give a bond in the sum of Five Hundred Dollars (\$500), which shall act as a supersedeas bond.

Dated this, the 23d day of July, 1923.

R. S. BEAN,
District Judge.

Filed July 23, 1923. G. H. Marsh, Clerk. [41]

AND AFTERWARDS, to wit, on the 23d day of July, 1923, there was duly filed in said court, a bond on appeal, in words and figures as follows, to wit: [42]

In the District Court of the United States for the
District of Oregon.

No. 8626.

GENERAL STEAMSHIP CORPORATION, a
Corporation,
Plaintiff,

vs

ASTORIA OVERSEAS CORPORATION, a Corporation, OLOF ANDERSON, O. E. ANDERSON, O. B. SETTERS, T. L. GAUL, H. VANCE, LEE DRAKE, R. R. BARTLETT, PHILENA BARTLETT, J. FRED LARSON and C. A. NYQUIST,
Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That we, General Steamship Corporation, as principal, and National Surety Company a corporation of New York, authorized to transact a surety business in the State of Oregon, as surety, are held and firmly bound to the defendants above named in the full sum of Five Hundred Dollars (\$500) to be paid to said defendants, or any of them, to the payment of which well and truly to be made we bind ourselves, our successors in interest and assigns jointly and severally by these presents.

Sealed with our seals this 21st day of July, 1923.

WHEREAS, the plaintiff in the above-entitled suit is prosecuting an appeal to the Circuit Court of Appeals for the Ninth Circuit, to reverse the decree rendered and entered in said cause in the United States District Court for the District of Oregon on the — day of May, 1923;

NOW, THEREFORE, the condition of this obligation is such that if said plaintiff shall prosecute said appeal to effect and answer all damages and costs, if it fails to make said appeal [43] good, then this obligation shall be void; otherwise to remain in full force and effect.

GENERAL STEAMSHIP CORPORATION.

By Platt & Platt, Montgomery & Fales,

Solicitors of Record.

NATIONAL SURETY COMPANY.

By H. C. Leigh,

Attorney in Fact.

Countersigned at Portland, Oregon, under date of July 21, 1923.

[Seal]

By G. E. THATCHER,
Resident Agent.

Approved:

R. S. BEAN,
United States District Judge.

Filed July 23, 1923. G. H. Marsh, Clerk. [44]

AND AFTERWARDS, to wit, on the 23d day of July, 1923, there was duly filed in said court, a praecipe for transcript, in words and figures as follows, to wit: [45]

In the District Court of the United States for the District of Oregon.

No. 8626.

GENERAL STEAMSHIP CORPORATION, a Corporation,

Plaintiff,

vs.

ASTORIA OVERSEAS CORPORATION, a Corporation, OLOF ANDERSON, O. E. ANDERSON, O. B. SETTERS, T. L. GAUL, H. VANCE, LEE DRAKE, R. R. BARTLETT, PHILENA BARTLETT, J. FRED LARSON and C. A. NYQUIST,

Defendants.

Praecipe for Transcript of Record.

To the Clerk of the Above-entitled Court.

Please issue a certified transcript of the record in your court in the above-entitled case, to the Circuit Court of Appeals for the Ninth Circuit, consisting of the following:

- (1) Copy of statement of evidence.
- (2) Decree of the Court.
- (3) Complaint.
- (4) Amended answer.
- (5) Second amended answer.
- (6) Petition for appeal.
- (7) Bond on appeal.
- (8) Order allowing appeal.
- (9) Citation on appeal.

PLATT & PLATT,
MONTGOMERY & FALES,
Solicitors for Appellant. [46]

In the District Court of the United States for the
District of Oregon.

GENERAL STEAMSHIP CORPORATION, a
Corporation,

Plaintiff,

vs.

ASTORIA OVERSEAS CORPORATION, a Cor-
poration, OLOF ANDERSON, O. E. AN-
DERSON, O. B. SETTERS, T. L. GAUL,

H. VANCE, LEE DRAKE, R. R. BARTLETT, PHILENA BARTLETT, J. FRED LARSON and C. A. NYQUIST,

Defendants.

Stipulation Re Transcript of Record.

It is hereby stipulated by and between the parties hereto through their respective attorneys of record, Platt & Platt, Montgomery & Fales for the plaintiff and O. B. Setters for the defendants, that the requested certified transcript of the solicitors for the appellant may constitute when issued, the certified transcript for appeal in this cause.

PLATT & PLATT,

MONTGOMERY & FALES,

Solicitors for the Appellant.

O. B. SETTERS,

Solicitor for the Respondents.

Filed July 23, 1923. G. H. Marsh, Clerk. [47]

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages, numbered from 3 to 47 inclusive, constitute the transcript of record on appeal from the final decree of said court in the same in which the General Steamship Corporation, a corporation, is plaintiff and appellant, and the Astoria Overseas Corporation, a cor-

poration, Olof Anderson, O. E. Anderson, O. B. Setters, T. L. Gaul, H. Vance, Lee Drake, R. R. Bartlett, Philena Bartlett, J. Fred Larson and C. A. Nyquist are defendants and appellees; that the said transcript has been prepared by me in accordance with the praecipe for transcript filed by the said appellant, and it is a full, true and correct transcript of the record and proceedings had in said court in said cause, in accordance with the said praecipe, as the same appear of record and on file at my office and in my custody.

I further certify that the cost of the foregoing transcript is \$11.35, and that the same has been paid by the said appellant.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Portland, in said District, this 27th day of July, 1923.

[Seal]

G. H. MARSH,
Clerk.

[Endorsed]: No. 4068. United States Circuit Court of Appeals for the Ninth Circuit. General Steamship Corporation, a Corporation, Appellant, vs. Astoria Overseas Corporation, a Corporation, Olof Anderson, O. E. Anderson, O. B. Setters, T. L. Gaul, H. Vance, Lee Drake, R. R. Bartlett, Philena Bartlett, J. Fred Larson, and C. A. Nyquist, Appellees. Transcript of Record. Upon

Appeal from the United States District Court for
the District of Oregon.

Filed July 30, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Ap-
peals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

